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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STAR FABRICS, INC., a California
corporation d/b/a "Damask Fabrics",
Plaintiff,
vs.
POETRY CORPORATION; *et al.*,
Defendants.

Case No.: CV13-7292-FMO (CWx)
Hon. Carla Woehrle Presiding
[DISCOVERY MATTER]

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this matter would be warranted. Accordingly, the parties hereby stipulate to and petition this Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or

1 items that are entitled under the applicable legal principles to treatment as
2 confidential. The parties have agreed that the terms of this Protective Order shall also
3 apply to any future voluntary disclosures of confidential, proprietary, or private
4 information. The parties reserve their rights to object to or withhold any information,
5 including confidential, proprietary, or private information, on any other applicable
6 grounds permitted by law, including third-party rights and relevancy.

7
8 **2. DEFINITIONS**

9 **2.1 Party:** any party to this action, including all of its officers,
10 directors, employees, consultants, retained experts, and outside counsel (and their
11 support staff).

12 **2.2 Disclosure or Discovery Material:** all items or information,
13 regardless of the medium or manner generated, stored, or maintained (including,
14 among other things, testimony, transcripts, or tangible things), that are produced or
15 generated in disclosures or responses to discovery in this matter.

16 **2.3 "Confidential" Information or Items:** information (regardless of
17 how generated, stored, or maintained) or tangible things that qualify for protection
18 under standards developed under Fed. R. Civ. P. 26(c).

19 **2.4 "Attorneys' Eyes Only":** Discovery Material or such portion of
20 such material as consists of:

21 a) any commercially sensitive and/or confidential business or
22 financial information (including without limitation confidential nonpublic contracts,
23 profitability reports or estimates, sales reports, and sales margins) which could
24 reasonably create a competitive disadvantage if disclosed to the parties in this action;

25 b) any business or financial information that is confidential,
26 proprietary, or commercially sensitive to third parties who have had business dealings
27 with parties to this action; or

1 c) any other category of material or information hereinafter given
2 Confidential status by the Court, to the extent said material could reasonably create a
3 competitive disadvantage if disclosed to the parties in this action.

4 2.5 Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 2.6 Producing Party: a Party or non-party that produces Disclosure or
7 Discovery Material in this action.

8 2.7 Designating Party: a Party or non-party that designates
9 information or items that it produces in disclosures or in responses to discovery as
10 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

11 2.8 Protected Material: any Disclosure or Discovery Material that is
12 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

13 2.9 Expert: a person with specialized knowledge or experience in a
14 matter pertinent to the litigation who has been retained by a Party or its counsel to
15 serve as an expert witness or as a consultant in this action. This definition includes a
16 professional jury or trial consultant retained in connection with this litigation. The
17 expert witness or consultant may not be a past or a current employee of the Party
18 (including any affiliates or related entities) adverse to the Party engaging the expert
19 witness or consultant, or someone who at the time of retention is anticipated to
20 become an employee of the Party (including any affiliates or related entities) adverse
21 to the Party engaging the expert witness or consultant. Moreover, the expert witness
22 or consultant may not be a current employee or anticipated to become an employee of
23 any entity who is a competitor of the Party adverse to the Party engaging the expert
24 witness or consultant.

25 2.10 Professional Vendors: persons or entities that provide litigation
26 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
27

1 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)
2 and their employees and subcontractors.

3
4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also any information copied or extracted
7 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
8 testimony, conversations, or presentations by parties or counsel to or in litigation or in
9 other settings that might reveal Protected Material.

10
11 4. DURATION

12 Even after the termination of this action, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs.

15
16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for
18 Protection. Each Party or non-party that designates information or items for
19 protection under this Order must take care to limit any such designation to specific
20 material that qualifies under the appropriate standards. A Designating Party must take
21 care to designate for protection only those parts of material, documents, items, or oral
22 or written communications that qualify – so that other portions of the material,
23 documents, items, or communications for which protection is not warranted are not
24 swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited.
26 Designations that are shown to be clearly unjustified, or that have been made for an
27 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development
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1 process, or to impose unnecessary expenses and burdens on other parties), expose the
2 Designating Party to sanctions.

3 If it comes to a Party's or a non-party's attention that information or
4 items that it designated for protection do not qualify for protection at all, or do not
5 qualify for the level of protection initially asserted, that Party or non-party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise
8 provided in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as
9 otherwise stipulated or ordered, material that qualifies for protection under this Order
10 must be clearly so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (apart from transcripts
13 of depositions or other pretrial or trial proceedings), that the Producing Party affix the
14 legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the top or bottom
15 of each page that contains protected material.

16 A Party or non-party that makes originals or copies of documents
17 or materials available for inspection need not designate them for protection until after
18 the inspecting Party has indicated which material it intends to copy. During the
19 inspection and before the designation, all of the material made available for
20 inspection shall be deemed "ATTORNEYS' EYES ONLY." After the inspecting
21 Party has identified the documents it wants copied and produced, the Producing Party
22 must designate, either in writing or on the record (at a deposition), which documents,
23 or portions thereof, qualify for protection under this Order. Then the Receiving Party
24 must affix the "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" legend at the
25 top of each copied page that contains Protected Material. If only a portion or portions
26 of the material on a page qualifies for protection, the Producing Party also must
27 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the

1 margins) and must specify, for each portion, the level of protection being asserted
2 (either “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).

3 (b) for testimony given in deposition or in other pretrial or trial
4 proceedings, that the Party or non-party offering or sponsoring the testimony identify
5 on the record, before the close of the deposition, hearing, or other proceeding, all
6 protected testimony, and further specify any portions of the testimony that qualify as
7 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” When it is impractical to
8 identify separately each portion of testimony that is entitled to protection, and when it
9 appears that substantial portions of the testimony may qualify for protection, the Party
10 or non-party that sponsors, offers, or gives the testimony may invoke on the record
11 (before the deposition or proceeding is concluded) a right to have up to 20 days to
12 identify the specific portions of the testimony as to which protection is sought and to
13 specify the level of protection being asserted (“CONFIDENTIAL” or
14 “ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are
15 appropriately designated for protection within the 20 days shall be covered by the
16 provisions of this Stipulated Protective Order.

17 Transcript pages containing Protected Material must be separately
18 bound by the court reporter, who must affix to the top of each such page the legend
19 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party or
20 non-party offering or sponsoring the witness or presenting the testimony.

21 (c) for information produced in some form other than
22 documentary, and for any other tangible items, that the Producing Party affix in a
23 prominent place on the exterior of the container or containers in which the
24 information or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’
25 EYES ONLY.” If only portions of the information or item warrant protection, the
26 Producing Party, to the extent practicable, shall identify the protected portions,
27 specifying whether they qualify as “CONFIDENTIAL” or as “ATTORNEYS’ EYES
28

1 ONLY.”

2 5.3 Inadvertent Failures to Designate. If timely corrected, an
 3 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”
 4 or “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating
 5 Party’s right to secure protection under this Order for such material. If material is
 6 appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”
 7 after the material was initially produced, the Receiving Party, on timely notification
 8 of the designation, must make reasonable efforts to assure that the material is treated
 9 in accordance with the provisions of this Order.

10 11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Unless a prompt challenge to a
 13 Designating Party’s confidentiality designation is necessary to avoid foreseeable
 14 substantial unfairness, unnecessary economic burdens, or a later significant disruption
 15 or delay of the litigation, a Party does not waive its right to challenge a confidentiality
 16 designation by electing not to mount a challenge promptly after the original
 17 designation is disclosed.

18 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
 19 Designating Party’s confidentiality designation must do so in good faith and must
 20 begin the process by conferring with counsel for the Designating Party in writing. In
 21 conferring, the challenging Party must explain the basis for its belief that the
 22 confidentiality designation was not proper and must give the Designating Party an
 23 opportunity to review the designated material, to reconsider the circumstances, and, if
 24 no change in designation is offered, to explain the basis for the chosen designation. A
 25 challenging Party may proceed to the next stage of the challenge process only if it has
 26 engaged in this meet-and-confer process first.

27 6.3 Court Intervention. A Party that elects to press a challenge to a
 28

1 “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s outside counsel, as well as employees
3 of said outside counsel to whom it is reasonably necessary to disclose the information
4 for this litigation;

5 (b) Board members, officers and directors of the Receiving
6 Party;

7 (c) Other employees of the Receiving Party to whom disclosure
8 is reasonably necessary for this litigation and who are bound by internal
9 confidentiality obligations as part of their employment or who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) Experts (as defined in this Order) of the Receiving Party to
12 whom disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (e) the Court personnel assigned to this litigation;

15 (f) court reporters, their staffs, and professional vendors to
16 whom disclosure is reasonably necessary for this litigation and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (g) during their depositions, witnesses in the action to whom
19 disclosure is reasonably necessary and who have signed the “Acknowledgment and
20 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony or
21 exhibits to depositions that reveal Protected Material must be separately bound by the
22 court reporter and may not be disclosed to anyone except as permitted under this
23 Stipulated Protective Order; and

24 (h) the author and recipients of the document or the original
25 source of the information.

26 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or
27 Items. Unless otherwise ordered by the Court or permitted in writing by the

1 Designating Party, a Receiving Party may disclose any information or item
2 designated “ATTORNEYS’ EYES ONLY” only to:

3 (a) the Receiving Party’s outside counsel, as well as employees
4 of said outside counsel to whom it is reasonably necessary to disclose the information
5 for this litigation;

6 (b) Experts (as defined in this Order) of the Receiving Party to
7 whom disclosure is reasonably necessary for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (c) the Court personnel assigned to this litigation;

10 (d) court reporters, their staffs, and professional vendors to
11 whom disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

13 (e) the author and recipients of the document or the original
14 source of the information.

15 7.4 Nothing in this Order shall be read to prohibit the use of otherwise
16 Protected Material to prosecute claims against additional potential defendants
17 identified in said materials.

18
19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
20 PRODUCED IN OTHER LITIGATION

21 If a Receiving Party is served with a subpoena or an order issued in other
22 litigation that would compel disclosure of any Discovery Material, the Receiving
23 Party must so notify the Designating Party, in writing immediately and in no event
24 more than five business days after receiving the subpoena or order. Such notification
25 must include a copy of the subpoena or court order. The Receiving Party also must
26 immediately inform in writing the Party who caused the subpoena or order to issue in
27 the other litigation that some or all of the material covered by the subpoena or order is

1 the subject of this Protective Order. In addition, the Receiving Party must deliver a
2 copy of this Stipulated Protective Order promptly to the Party in the other action that
3 caused the subpoena or order to issue.

4 The purpose of imposing these duties is to alert the interested parties to the
5 existence of this Protective Order and to afford the Designating Party in this case an
6 opportunity to try to protect its confidentiality interests in the court from which the
7 subpoena or order issued. The Designating Party shall bear the burdens and the
8 expenses of seeking protection in that court of its confidential material – and nothing
9 in these provisions should be construed as authorizing or encouraging a Receiving
10 Party in this action to disobey a lawful directive from another court.

11
12 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
14 Protected Material to any person or in any circumstance not authorized under this
15 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
16 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
17 to retrieve all copies of the Protected Material, (c) inform the person or persons to
18 whom unauthorized disclosures were made of all the terms of this Order, and (d)
19 request such person or persons to execute the “Acknowledgment and Agreement to
20 Be Bound” that is attached hereto as Exhibit A.

21
22 10. FILING PROTECTED MATERIAL

23 Without written permission from the Designating Party, or a court order
24 secured after appropriate notice to all interested persons and after following the
25 procedures provided for in Local Rule 79-5.1, a Party may not file in the public
26 record in this action any Protected Material.

1 11. FINAL DISPOSITION

2 Unless otherwise ordered or agreed to in writing by the Producing Party, within
3 60 days after the final termination of this action, each Receiving Party must either
4 return all Protected Material to the Producing Party or certify the destruction of said
5 material. As used in this subdivision, “all Protected Material” includes all copies,
6 abstracts, compilations, summaries or any other form of reproducing or capturing any
7 of the Protected Material. Whether the Protected Material is returned or destroyed, the
8 Receiving Party must submit a written certification to the Producing Party (and, if not
9 the same person or entity, to the Designating Party) by the 60-day deadline that
10 identifies (by category, where appropriate) all the Protected Material that was
11 returned or destroyed and that affirms that the Receiving Party has not retained any
12 copies, abstracts, compilations, summaries or other forms of reproducing or capturing
13 any of the Protected Material.

14 Notwithstanding this provision, counsel are entitled to retain an archival copy
15 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
16 attorney work product, even if such materials contain Protected Material. Any such
17 archival copies that contain or constitute Protected Material remain subject to this
18 Protective Order as set forth in Section 4 (DURATION), above.

19
20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right
22 of any person to seek its modification in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of
24 this Protective Order no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground not addressed in this
26 Stipulated Protective Order. Similarly, no Party waives any right to object on any
27 ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Inadvertent Production of Privileged Documents. If a Party,
2 through inadvertence, produces any document or information that it believes is
3 immune from discovery pursuant to an attorney-client privilege, the work product
4 privilege, or any other privilege, such production shall not be deemed a waiver of any
5 privilege, and the Producing Party may give written notice to the Receiving Party that
6 the document or information produced is deemed privileged and that return of the
7 document or information is requested. Upon receipt of such notice, the Receiving
8 Party shall immediately gather the original and all copies of the document or
9 information of which the Receiving Party is aware, in addition to any abstracts,
10 summaries, or descriptions thereof, and shall immediately return the original and all
11 such copies to the Producing Party. Nothing stated herein shall preclude a Party from
12 challenging an assertion by the other Party of privilege or confidentiality.

13
14 IT IS SO ORDERED.

15
16 Date: March 17, 2014



HON. CARLA WOHRLE
MAGISTRATE JUDGE
U.S. DISTRICT COURT